



July 22, 1999

Ms. Donna J. Gordon
County Attorney
Houston County
100 N. 6th, Suite 105
Crockett, Texas 75835

OR99-2058

Dear Ms. Gordon:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126032.

Houston County (the "county") received an open records request for information concerning the requestor's client and the client's property on Highway 7 East. You contend that the identity of the person who reported a violation of the Health Code is excepted from required public disclosure by the informer's privilege pursuant to section 552.101 of the Government Code. We assume that you have released the remainder of the requested information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement

only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You represent to us that the complainant reported to the county surveyor an improperly installed septic system which is a violation of the Health Code. You further explain that the county surveyor has the duty to inspect septic systems. We conclude that you may withhold information that identifies the complainant under section 552.101 in conjunction with the informer's privilege.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 126032

Encl.: Submitted documents

cc: Mr. Tim D. Salley
Attorney at Law
P.O. Box 780
Crockett, Texas 75835
(w/o enclosures)